

255-8  
No. 12074

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United States  
Court of Appeals  
for the Ninth Circuit

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RICE GROWERS ASSOCIATION OF  
CALIFORNIA, a corporation,

Appellant,

vs.

REDERIAKTIEBOLAGET FRODE, a Corpora-  
tion, Owner of the Steamship "Frej",  
Appellee.

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Apostles on Appeal

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Appeal from the United States District Court  
for the Northern District of California,  
Southern Division

**FILED**

FEB -4 1949

PAUL P. O'BRIEN,  
CLERK



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Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF PROCTORS

GEORGE H. HAUERKEN,  
HAUERKEN & ST. CLAIR,

535 Russ Building,  
235 Montgomery Street,  
San Francisco, California.

Attorneys for Rice Growers Association of  
California, Damage Claimant and Appel-  
lant.

GRAHAM & MORSE,  
310 Sansome Street,  
San Francisco, California.

Attorneys for Petitioner and Appellee.

take said voyage, and the owner of said vessel had [2] exercised due diligence to make said vessel in all respects seaworthy, as hereinbefore set forth.

#### V.

That while said vessel was proceeding on said voyage between the port of San Francisco, California, and the port of Havana, Cuba, and after departing from Pier 45 at San Francisco, California, and while still in San Francisco Bay, a fire started in the boiler room of said vessel, thereafter spreading to the engine room and the No. 3 cargo compartments, and notwithstanding the efforts of the officers and crew of said vessel to extinguish said fire, the same continued to burn until about 5:00 a.m. on the morning of May 7, 1947. That upon the fire being extinguished the vessel was thereafter towed to Pier 45, and thereafter the damaged as well as the sound cargo was discharged and every effort made to preserve and protect the said cargo. That during the occurrence of said fire, the said vessel received assistance from tugs, fire boats and the U. S. Coast Guard, which assistance was rendered in aid of extinguishing the fire and towing the said vessel to Southampton Shoals, San Francisco Bay, where she was beached. That as a direct result of said fire, the said vessel became in an inoperable condition. That at the Port of San Francisco, California, as a direct and necessary result of said fire, it became and is necessary to effect substantial repairs to said steamship Frej in order to place said vessel in an operable and seaworthy condition. That

the cost of effecting said repairs to said vessel will be in excess of \$150,000, and the time required to effect said repairs will require not less than 58 calendar days. That the voyage of said vessel terminated in San Francisco, California, on May 8, 1947.

That attached hereto, marked Exhibit A, and incorporated [3] for all intents and purposes as though herein set forth in haec verba, is set forth a true copy of the bill of lading covering the receipt, loading, transportation and discharge of the cargo aboard the said vessel at the time of departure from San Francisco, California. That in and by Article 4 of the bills of lading covering the cargo aboard said vessel, it is provided in part:

“In any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage which in the judgment of the carrier or the master is likely to give rise to risk of . . . detention, damage, delay or disadvantage to or loss of the ship . . . for any reason to commence or proceed on or continue the voyage . . . the carrier or the master, whether or not proceeding toward or entering, or attempting to enter the port of discharge . . . may discharge the goods at a depot, lazaretto, craft or other place . . . or the carrier or the master may discharge or forward the goods by any means, rail, water, land or air, at the risk and expense of the goods. The carrier or the master is not required to give notice of discharge of the goods or the forwarding thereof

as herein provided. When the goods are discharged from the ship as herein provided, they shall be at their own risk and expense. Such discharge shall constitute complete delivery and performance under this contract, and the carrier shall be free from any further responsibility. . . .”

That acting under the authority granted by the bill of lading clause above quoted, the master of the SS Frej did on June 19, 1947, notify all owners of cargo which had been aboard said vessel at the time of the commencement of said voyage that the voyage had terminated and had been abandoned and that the cargo was at the risk and expense of cargo and its owners at San Francisco, California.

## VI.

That Rice Growers Association of California, a corporation, heretofore, to-wit, on the 6th day of June, 1947, did file a libel in admiralty in the District Court of the United States, Northern District of California, Southern Division, against the Steamship Frej, her engines, boilers, boats, tackle, apparel [4] and furniture, etc., and against the Rederiaktiebolaget Frode, a corporation, your petitioner herein, as owner of said vessel, in which cause said libelants assert that by written assignment they became the owner of the damaged and destroyed cases and/or sacks of rice, more particularly set forth in said libel, and seek to recover the sum of \$465,990, together with interest thereon and costs, the alleged damages which said libelants claim to have sustained by

reason of said fire. That upon process issued by said Court in said cause, your petitioner has been cited to appear in said court and to answer said libel. That said cause is now pending in said Court and is numbered 24958-G in admiralty in said Court. That the name of the proctors for said libelant is George H. Hauerken and Hauerken, Ames and St. Clair and the address of said proctors is 235 Montgomery Street, San Francisco, California.

That a libel has been filed in this Court by Jakko Olavi Eriksson against the Steamship Frej, etc., and against Rederiaktiebolaget Frode, a corporation, respondents, to recover alleged damages, wages, etc., in amount of \$6353.37 said to have resulted during said voyage, said cause being numbered 24978-R of the docketed admiralty causes in this Court; that a libel has been filed in this Court by Einer Hamalainen against the Steamship Frej., etc., and against Rederiaktiebolaget Frode, a corporation, respondents, to recover alleged damages, wages, etc., in amount of \$2,483.77 said to have resulted during said voyage, said cause being numbered 24979-H of the docketed admiralty causes in this Court; that Joseph B. McKeon, Esq., proctor in admiralty, represents certain salvage claimants against said vessel. [5]

## VII.

Your petitioner alleges further that there are certain other claims which may be asserted against your petitioner or said vessel for alleged salvage



services rendered to said vessel during and following said fire as well as for alleged damage of cargo due to said fire, the exact amount and number of said claims being unknown to your petitioner.

### VIII.

Petitioner alleges upon information and belief that there are no liens upon said steamship Frej prior or paramount to any liens which may have accrued by reason of the matters aforesaid, and that the amount of the alleged claim in the action which has been filed against said vessel and against your petitioner and of the additional claims which may be asserted against said vessel and your petitioner, as hereinbefore set forth, is or may be in excess of the sum of \$450,000.00, and exceeds the amount and value of the interest of your petitioner in said steamship, together with her freight pending at the end of said voyage, which terminated at the port of San Francisco, California, on or about the 8th day of May, 1947. That upon information and belief the value of your petitioner's interest in said steamship Frej and the value of your petitioner's interest in the freight pending at the end of said voyage on said 8th day of May, 1947, did not and does not exceed the sum of \$176,500.

### IX.

That your petitioner desires to contest its liability and the liability of said steamship Frej for the injuries, losses, and damages, whether to persons or to property, caused, occasioned or incurred

upon said voyage, and particularly any loss and damage incurred by the owners or underwriters of the cargo aboard the [6] SS Frej, or other persons interested therein, and your petitioner hereby also claims the benefit of limitation of liability as provided in Sections 182, 193, 183b, 183c, 184, 185, 186, 187, 188 and 189 of the United States Code (being Sections 4282 to 4289, inclusive, of the Revised Statutes of the United States, as amended), and also hereby claims the benefit of any and all Acts of the Congress of the United States exonerating a shipowner from liability or granting a shipowner a limitation of liability for injuries, losses and damages, as are herein alleged, set forth or referred to, and your petitioner is now ready, able and willing, and hereby offers to give its stipulation or stipulations, with sufficient sureties, conditioned for the payment into this Court by your petitioner, if required, of the value of your petitioner's interest in said steamship Frej, together with her freight pending at the end of said voyage, if any was pending; such payment to be made whenever the same shall be ordered herein.

### X.

While not in any way admitting that your petitioner is under any liability for the losses and damages occurring as aforesaid, and your petitioner hereby claiming and reserving the right to contest in this or any other Court any liability therefor, either personal or of said steamship Frej, your petitioner claims that it is entitled to have

limited its liability, if any, in the premises, to the amount or value of its interest as aforesaid in the said steamship Frej and freight pending, if any, at the end of said voyage.

## XI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court. [7]

Wherefore, your petitioner prays that this Honorable Court order due appraisement to be had of the interest of your petitioner in said steamship Frej, her engines, etc., as the same were at the end of said voyage, and due appraisement of the interest of your petitioner in the amount of the freight pending, if any, at the close of said voyage; that this Honorable Court do make an order for the payment of said appraised value into the Court or for the giving of a stipulation with sureties for the payment thereof into the Court whenever the same shall be ordered, with interest, and upon compliance with said order this Honorable Court do issue a monition against said Rice Growers Association of California, a corporation, Jakko Olavi Eriksson, Einar Hamalainen, and all other persons claiming damages of your petitioner or against the said steamship Frej by reason of injuries to any persons, or of loss, damage or injury to property occurring or arising upon said voyage or resulting from said fire, citing them and each of them to appear before this Court and make due proof of their respective claims at or before a time



to be made in said writ, according to law and the rules and practice of this Court; and that this Honorable Court also, by an order or otherwise, restrain the prosecution of any or all suit or suits, action or actions, libel or libels, or legal proceedings of any manner or description, except in the present proceedings, against your petitioner or the steamship Frej, her engines, etc., in respect of the losses or damages claimed by reason of said fire and any and all claims occurring or arising upon said voyage of said steamship Frej; and that said steamship Frej may be released and discharged from arrest in the cause now pending as hereinbefore set forth, and in any other cause which may hereafter be commenced by reason of any claim arising out [8] or said fire or during said voyage, and that this Honorable Court decree that neither your petitioner nor the said steamship Frej is liable to any extent for any loss, damage or injury arising out of said fire or during said voyage, but if the Court should adjudge that they, or either of them, are liable to any extent therefor, then that such liability be limited to the amount and value of your petitioner's interest in said steamship Frej and her freight pending, if any, at the close of said voyage as aforesaid, and as such values may be determined by the appraisement of such interests, as hereinbefore prayed; and that the moneys paid or secured to be paid into Court as aforesaid be divided pro rata among the several claimants in proportion to the amount of their respective claims, duly approved and confirmed, saving to all

parties any priority to which they may be entitled legally; and that your petitioner may have such other and further relief as shall be deemed meet in the premises.

GRAHAM & MORSE,  
Proctors for Petitioner.

State of California,

City and County of San Francisco—ss.

Clarence G. Morse, being first duly sworn, deposes and says:

That he is of counsel for the petitioner herein, Rederiaktiebolaget Frode, a corporation; that he has read the foregoing Petition and knows the contents thereof, and that the same is true, to the best of his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true; the sources of his information and the grounds for his belief as to the [9] matters therein stated to have been alleged upon information and belief are statements and records contained in your affiant's office. The reason this verification is not made by an officer of the petitioning corporation is that none of the officers of the corporation is within the county or district within which your affiant has his offices.

CLARENCE G. MORSE.

Subscribed and sworn to before me this 24th day of July, 947.

[Seal]                      /s/ EMMA L. MacHUGH,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires Jan. 15, 1948.

(Copy of Bill of Lading.)

[Endorsed]: Filed July 25, 1947. [10]

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[Title of District Court and Cause.]

STIPULATION RE AMOUNT OF AD IN-  
TERIM STIPULATION OF VALUE PEND-  
ING APPRAISEMENT

It Is Hereby Stipulated by and between Rederiaktiebolaget Frode, a corporation, petitioner herein, Rice Growers Association of California, a corporation, Derby Sharp Quinby & Tweedt, representing certain cargo interest, and Joseph B. McKeon, Esq., proctor in admiralty representing certain salvage claimants of the Swedish steamship Frej, that pending the appraisement of the value of the interest of the said petitioner in the steamship Frej, her engines, etc., at the end of the voyage of said vessel during which said fire occurred, and the value of said petitioner's interest in and to the pending freight, if any, for said voyage, upon the petitioner giving a stipulation with the petitioner, Rederiaktiebolaget Frode, a corporation, as prin-

cipal, and an approved corporate surety as surety for the payment of the sum of \$290,250.00 into court, without interest on said sum either before or after [11] judgment, whenever the same shall be ordered, or upon petitioner depositing in this matter the sum of \$290,250.00 lawful money of the United States with the Clerk of the above-entitled Court, in lieu of giving a stipulation in said amount as above provided, such further proceedings may be taken in said limitation proceedings according to the course and practice of the above-entitled court and the rules and laws governing the same, as if said stipulation had been filed pursuant to a due appraisement of said vessel and pending freight.

It Is Further Stipulated that when the appraisement of said vessel and freight pending shall be completed and the appraised value of said petitioner's interest in said vessel and freight at said time has been duly fixed by order of the above-entitled court, the said stipulation of \$290,250.00, or the cash deposit of \$290,250.00, shall thereupon be reduced or increased to the amount of the appraised valuation of said petitioner's interest in said vessel and freight with interest thereon at the rate of six per cent per annum, and costs from the date of said stipulation for \$290,250.00 or from

the date of depositing said cash deposit, as the case may be.

Dated: July 30, 1947.

/s/ GRAHAM & MORSE,

Proctors for Rederiaktiebolaget Frode, Petitioners.

/s/ GEORGE H. HAUERKEN,

/s/ HAUERKEN, AMES & ST.

CLAIR,

Proctors for Rice Growers Association of California, a Corporation.

/s/ DERBY, SHARP, QUINBY &  
TWEEDT,

Proctors for Certain Cargo  
Interests.

/s/ JOSEPH B. McKEON,

/s/ WRIGHT & McKEON,

Proctors for Certain Salvage  
Claimants.

[Endorsed]: Filed Aug. 1, 1947. [12]

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[Title of District Court and Cause.]

AD INTERIM STIPULATION FOR VALUE  
PENDING APPRAISEMENT

Whereas a Petition Was Filed Herein on the 25th day of July, 1947, by Rederiaktiebolaget Frode, a corporation, owner of the SS Frej, her engines, etc., praying for exoneration from, or limitation of its liability for any and all claims, injuries, losses or damages, occasioned or incurred upon



the voyage of said SS Frej, which voyage is stated in said petition to have ended at the port of San Francisco, California, on the 8th day of May, 1947, particularly any and all loss or damage arising out of the fire aboard the SS Frej which occurred in San Francisco Bay, California, on or about the 6th day of May, 1947.

And Whereas, an order of appraisement has been entered herein;

And Whereas, a "Stipulation re Amount of Ad Interim Stipulation of Value Pending Appraisement" has been filed herein, fixing the Ad Interim Stipulation to be filed herein in the amount of \$290,-250.00, without interest on said sum either before or after judgment.

Now Therefore, It Is Stipulated and Agreed, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them is, bound in the sum of \$290,250.00 in a lawful money of the United States of America, without interest on said sum either [13] before or after judgment.

The condition of this stipulation is such that if the petitioner herein and Royal Indemnity Co., a corporation organized and existing under the laws of the State of New York, and duly qualified under and by virtue of the laws of the State of California to act as a corporate surety, the stipulators undersigned, shall abide by all orders of the court, interlocutory or final, and pay into Court the above sum of Two Hundred Ninety Thousand Two Hundred Fifty Dollars (\$290,250.00), without interest on said sum either before or after judgment, when-

ever ordered by this Court or by any appellate court, if an appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

This stipulation shall be deemed and construed to contain the "express agreement" for summary judgment, and execution thereon, mentioned in Rule 19 of the District Court.

Dated: San Francisco, California, July 25, 1947.

REDERIAKTIEBOLAGET

FRODE,

A Corporation.

By J. H. WINCHESTER & CO.,

INC.,

By L. J. CLOUD,

Mgr. Chartering & Ship Sales.

[Seal]

ROYAL INDEMNITY

COMPANY,

By JAMES D. SIMPSON,

Attorney in Fact.

State of California,

City and County of San Francisco—ss.

On this 1st day of August in the year 1947 before me, Eugene P. Jones, a Notary Public in and for the County and State aforesaid, personally appeared James D. Simpson, known to me to be the person whose name is subscribed to the within instrument and known to me to be the Attorney in Fact of Royal Indemnity Company and acknowledged to me that he subscribed the name of the said Com-

pany thereto as principal, and his own name as Attorney in Fact. [14]

[Seal]

EUGENE P. JONES,

Notary Public in and for Said  
County and State.

My Commission Expires December 28, 1947.

State of California,

City and County of San Francisco—ss.

On this 1st day of August in the year One Thousand Nine Hundred and Forty Seven, before me, Emma L. MacHugh, a Notary Public, in and for the City and County of San Francisco, State of California, residing therein duly commissioned and sworn personally appeared L. H. Cloud, known to me to be the Manager, Chartering & Ship Sales of the corporation described in and that executed the within instrument and also known to me to be the person who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[Seal]

EMMA L. MacHUGH,

Notary Public in and for the City and County of  
San Francisco, State of California.

(Power of Attorney.)

[Endorsed]: Filed Aug. 1, 1947. [15]



[Title of District Court and Cause.]

## ORDER FOR AD INTERIM STIPULATION

Rederiaktiebolaget Frode, a corporation, having filed a petition for the limitation of petitioner's liability as sole owner of the steamship Frej and having prayed for an appraisal of the value of petitioner's interest in the vessel and her pending freight, if any, and for leave to file a stipulation for the amount of its appraised value or an ad interim stipulation pending the appraisal of petitioner's interest in said vessel and her pending freight, if any, by a Commissioner to be appointed by the Court, and a "Stipulation Re Amount of Ad Interim Stipulation of Value Pending Appraisalment" having been filed herein providing for an Ad Interim Stipulation in the sum of \$290,250.00 without interest on said sum before or after judgment.

Now, on motion of Graham & Morse, proctors for petitioners, it is [16]

Ordered, pursuant to said "Stipulation re Amount of Ad Interim Stipulation of Value Pending Appraisalment," that the petitioner file herein an ad interim stipulation in the sum of \$290,250.00, without interest thereon before or after judgment, with surety according to the rules and practice of this Court; and it is further

Ordered that any party may apply to have the amount in said stipulation increased or diminished as the case may be, to the amount of the appraised valuation of said petitioner's interest in said vessel and freight, with interest thereon at the rate of

six per cent per annum and costs from the date of said stipulation for \$290,250.00 first above mentioned, on the filing of the report of the Commissioner appointed to appraise the amount or value of petitioner's interest in said vessel and pending freight, if any, or on the ultimate determination of the Court on exceptions to the Commissioner's report.

Dated: August 4, 1947.

LOUIS E. GOODMAN,  
United States District Judge.

Approved as to Form:

.....,  
Proctors for Rice Growers  
Association.

.....,  
Proctors for Certain Cargo  
Interests.

.....,  
Proctors for Certain  
Salvage Claimants.

[Endorsed]: Filed Aug. 4, 1947. [17]

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[Title of District Court and Cause.]

ORDER OF REFERENCE FOR  
APPRAISEMENT

Present: Honorable Louis E. Goodman.

It appearing to this Court that a petition for limitation of liability has heretofore been filed herein

by the above named petitioner, and application having been made for an order appointing an appraiser to appraise the value of said petitioner's interest in the SS Frej, her engines, boilers, boats, tackle, apparel, furniture and appurtenances, immediately after the fire mentioned and said petitioner's interest in the freight of said steamship pending, if any, at the close of the voyage mentioned in said petition for limitation of liability, and good cause appearing therefor, upon motion of Graham & Morse, proctors for petitioner, it is hereby

Ordered that in pursuance of the Acts of Congress in such case made and provided, and of the rules and practice of this Court [18] in proceedings for the limitation of liability, the above matter be, and the same is, hereby referred to Francis St. J. Fox, United States Commissioner for the Northern District of California, to make due appraisement of the value of the petitioner's interest in said steamship Frej, her engines, boilers, tackle, etc., immediately after said fire, and her pending freight, if any, (1) at the end of the voyage stated in said petition, to wit, on the 8th day of May, 1947; (2) as of the date of this order; and (3) as of the date of the arrival of the steamship Frej at discharging dock in Havana, Cuba; and that he report the same with the testimony to be taken by him, and his opinion thereon to this Court with all convenient speed; and that notice of the proceedings before the said Commissioner be given

to the persons who have presented claims or brought suits, or to their proctors or attorneys.

Dated: August 4th, 1947.

LOUIS E. GOODMAN,  
United States District Judge.  
GRAHAM & MORSE,  
Proctors for Petitioner.

Approved as to Form.

/s/ GEORGE H. HAUERKEN,  
/s/ HAUERKEN, AMES & ST.  
CLAIR,  
Proctors for Rice Growers  
Association of California.  
/s/ DERBY SHARP, QUINBY &  
TWEEDT,  
Proctors for Certain Cargo  
Interests.

/s/ JOSEPH B. McKEON,  
/s/ WRIGHT & McKEON,  
Proctors for Certain  
Salvage Claimants.

[Endorsed]: Filed Aug. 4, 1947. [19]

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[Title of District Court and Cause.]

AMENDED ORDER FOR MONITION, FIXING  
TIME AND PLACE FOR FILING CLAIMS  
AND RESTRAINING ACTIONS

This matter having come on for hearing upon the application of Rederiaktiebolaget Frode, a cor-



poration, the above named petitioner, for an order for monition, fixing time and place for filing claims and restraining actions in the above entitled matter and it appearing that said petitioner did heretofore, to wit, on the 25th day of July, 1947, file herein a petition, as owner of the SS Frej, her engines, etc., praying for exoneration from or limitation of its damages, occasioned or incurred upon a voyage of said steamship Frej, which it is alleged in said petition ended at the Port of San Francisco, California, on the 8th day of May, 1947, and particularly any and all loss or damage arising out of the fire aboard said SS Frej, which occurred in San Francisco on or about the 6th day of May, 1947.

And it further appearing that a libel has been filed in this Court by Rice Growers Association of California, a corporation, against the SS Frej, her engines, boilers, boats, tackle, apparel, furniture, etc., and against Rederiaktiebolaget Frode, a corporation, respondents, to recover alleged damages in the sum of \$365,990.00 said to have resulted from said fire, and an amended libel to recover additional [20] alleged damages in the sum of \$100,000.00, said cause being No. 24958-G of the docketed admiralty causes in this Court;

And it further appearing that a libel has been filed in this Court by Jakko Olavi Eriksson against the Steamship Frej, her engines, boilers, etc., and against Rederiaktiebolaget Frode, a corporation, respondents, to recover alleged damages, wages, etc., in the amount of \$6353.37, said to have resulted during said voyage, said cause being numbered

24978-R of the docketed admiralty causes in this Court;

And it further appearing that a libel has been filed in this Court by Einar Hamalainen against the Steamship Frej, her engines, boilers, etc., and against Rederiaktiebolaget Frode, a corporation, respondents, to recover alleged damages, wages, etc., in amount of \$2483.77, said to have resulted during said voyage, said cause being numbered 24979-H of the docketed admiralty causes in this Court;

And it further appearing that Joseph B. McKeon, Esq., proctor in admiralty, represents certain salvage claimants against said vessel;

And an order having been entered herein for an ad interim stipulation and for the appraisement of the value of said petitioner's interest in the steamship Frej, her engines, boilers, boats, tackle, apparel, furniture and appurtenances at the end of the voyage mentioned in said petition for limitation of liability and also the value of said petitioner's interest in the freight, if any, of said steamship pending for said voyage;

And it further appearing that said Petitioner has filed with the Clerk of this Court an ad interim stipulation in the sum of \$290,250 with Royal Indemnity Company as surety, which stipulation is filed pursuant to "stipulation re amount of ad interim stipulation of value pending appraisement" on file herein and said stipulation been duly approved by this Court;

Now, Therefore, on motion of Messrs. Graham & Morse, proctors for said petitioner, It Is Hereby

Ordered that a monition issue out of and under the seal of this Court against all persons claiming for any and all loss, destruction, damage or injury, whether to persons or property, caused by or resulting from the fire aboard the SS Frej [21] which occurred in San Francisco Bay on or about the 6th day of May, 1947, and all persons claiming damages for any loss, destruction, damage or injury, whether to persons or property, arising out of or incurred on the voyage of said SS Frej during which said fire occurred, which said voyage is alleged in said petition to have commenced at San Francisco, California, on or about the 6th day of May, 1947, and to have ended at the Port of San Francisco on the 8th day of May, 1947, citing them, and each of them, to appear before the Court and make due proof of their respective claims on or before the 6th day of October, 1947, at ten o'clock a.m. of that day, and Francis St. J. Fox, United States Commissioner for the Northern District of California, is hereby appointed Commissioner before whom proof of all claims, which shall be presented pursuant to said monition, shall be made, subject to the right of any person or persons to controvert the same;

And It Is Further Ordered that public notice of said monition be given by publication in the Recorder, a newspaper published in the City and County of San Francisco, State of California, in the manner and for the time provided by law and by the rules of this Court, and that a copy of said notice be served upon all parties or their proctors,

who have filed libels, commenced actions, or made claims against said SS Frej, or against said petitioner, by reason of any loss, destruction, damage, or injury, alleged to have been incurred or sustained as a result of said fire or upon said voyage;

And It Is Further Ordered that the further prosecution of the aforesaid libel (first and third cause of action thereof only) by Rice Growers Association of California, libelant, against the SS Frej, her engines, boilers, boats, tackle, furniture, apparel, etc., and against the Rederiaktiebolaget Frode, a corporation, respondents, numbered 24958-G in admiralty, and commencement or prosecution of any and all other suit or suits, action or actions, libel or libels, or legal proceedings of any manner or description, except in the present proceedings against Rederiaktiebolaget Frode, petitioner herein, or against the SS Frej, her engines, boilers, boats, tackle, apparel, furniture and appurtenances in respect of any claim for loss, destruction, [22] damage or injury, by reason of said fire on or about said 6th day of May, 1947, aboard the SS Frej, or any claim occurring upon or arising out of said voyage of said SS Frej during which said fire occurred, which voyage is alleged in said petition to have commenced at San Francisco, California, on or about the 6th day of May, 1947, and to have ended at the Port of San Francisco on the 8th day of May, 1947, be, and the same are, and each of them is, hereby restrained;

And It Is Further Ordered that the service of this order as a restraining order be made within



this, the Northern District of California, in the usual manner, and in any other District of the United States by delivery by the Marshal of the United States for such district of a certified copy of this order to the person, or persons, to be restrained, or to their attorneys or proctors acting in their behalf.

This order does not restrain the further prosecution of any one or all of the following matters: (1) the libel of Jakko Olavi Ericksson against the steamship Frej, her engines, etc., being numbered 24978-R of the docketed admiralty causes in this Court; (2) the libel of Einar Hamalainen against the steamship Frej, her engines, etc., being numbered 24979-H of the docketed admiralty causes in this Court; and (3) the second cause of action as set forth in the libel, as amended, of Rice Growers Association of California, a corporation, against the steamship Frej, her engines, etc., being numbered 24958-G of the docketed admiralty causes in this Court; reserving, however, unto all parties the right at any time to apply to this Court for an order restraining the further prosecution of any one or all of the said three causes in this paragraph just mentioned.

Dated: August 20th, 1947.

LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed Aug. 20, 1947. [23]

[Title of District Court and Cause.]

ANSWER OF RICE GROWERS ASSOCIATION  
OF CALIFORNIA TO PETITION FOR LIM-  
ITATION OF LIABILITY

Comes now claimant Rice Growers Association of California, a corporation, and files this, its answer to the Petition of Rederiaktiebolaget Frode, a corporation, for Exoneration from or Limitation of Liability, and answers, admits, denies and alleges as follows:

I.

Answering Article I of said Petition, claimant admits the allegations therein contained.

II.

Answering Article II of said Petition, claimant admits that the said Steamship "Frej" is a Swedish vessel and admits that said steamship was at all times herein referred to used and employed by Petitioner in the business of transporting cargo between the Port of San Francisco and the Port of Havana, Cuba, but except as herein expressly admitted, claimant, having no information or [24] belief on the subject sufficient to enable it to answer, denies each and every, all and singular, the allegations contained in Article II.

III.

Answering Article III of said petition, claimant denies generally and specifically, each and every, all and singular, the allegation therein contained.

## IV.

Answering Article IV of said petition, claimant admits that on May 6th, 1947, the Steamship "Frej" sailed from the Port of San Francisco, California, bound on a voyage to the Port of Havana, Cuba, but except as herein expressly admitted, claimant denies generally and specifically, each and every, all and singular, the allegations therein contained.

## V.

Answering Article V of said petition, claimant admits that while said vessel was proceeding on a voyage between the Port of San Francisco and the Port of Havana, Cuba, and while still in San Francisco Bay, a fire started in the boiler room of said vessel, thereafter spreading to the engine room and the No. 3 cargo compartments and that said fire continued to burn until about 5:00 a.m. on the morning of May 7, 1947; further, that upon the fire being extinguished, the vessel was thereafter towed to Pier 45, and thereafter the cargo was discharged; further, that during the occurrence of said fire, the said vessel received assistance from tugs, fireboats and the U. S. Coast Guard; but except as herein expressly admitted, denies generally and specifically, each and every, all and singular, the allegations therein contained.

## VI.

Answering Article VI of said petition, claimant admits that it did on the 6th day of June, 1947, file a libel in Admiralty [25] in the District Court of

the United States, Northern District of California, Southern Division, against the Steamship "Frej," her engines, boilers, boats, tackle, apparel and furniture, etc., and against the Rederiaktiebolaget Frode, a corporation, as owner and operator of said vessel, in which cause claimant asserted that by written assignment and/or by written authority, claimant became authorized to file said libel; further, pursuant thereto and pursuant to the amendment to libel, claimant sought the total sum of Four Hundred Sixty-five Thousand Nine Hundred Ninety (\$465,990.00) Dollars; further, that pursuant to dismissal without prejudice of the second cause of action contained in the amendment to said libel, the demand was reduced to Three Hundred Seventy Thousand Nine Hundred Ninety (\$370,990.00) Dollars, together with interest thereon and costs, and the damages alleged in said libel and said amendment to said libel to be sustained by reason of said fire; further, that upon process issued by said court in said cause, petitioner was cited to appear in said court and to answer said libel; further, that said cause is now pending in said court and is No. 24958-G, in Admiralty, in said court; further, that the names of the proctors for claimant in said libel are George H. Hauerken and Hauerken, Ames & St. Clair, and the address of said proctors is 235 Montgomery Street, San Francisco 4, California.

Further answering Article VI of said petition, claimant admits that a libel has been filed in this



court by Jakko Olavi Eriksson against the Steamship "Frej," etc., and against Rederiaktiebolaget Frode, a corporation, to recover damages, wages, etc., in the amount of Six Thousand Three Hundred Fifty-three and 37/100 (\$6,353.37) Dollars, said to have resulted during said voyage, said cause being No. 24978-R of the docketed Admiralty causes in this court; further, that a libel has been filed in this court by Einar Hamalainen against the Steamship "Frej," etc., and against Rederiaktiebolaget Frode, a corporation, to recover [26] damages, etc., in the amount of Two Thousand Four Hundred Eighty-three and 77/100 (\$2,483.77) Dollars, said to have resulted during said voyage, said cause being No. 24979-H of the docketed Admiralty causes in this court; further, that The Shipowners and Merchants Tugboat Company, a corporation, and Shipowners & Merchants Towboat Co., Ltd., a corporation, have asserted a claim by the filing of a libel in this court under No. 25088-R in Admiralty and that Joseph B. McKeon, Esq., and Wright & McKeon are the proctors for said salvage claimants; but, except as herein expressly admitted, claimant denies generally and specifically, each and every, all and singular the allegations therein contained.

#### VII.

Answering Article VII of said petition, claimant admits the allegations therein contained.

#### VIII.

Answering Article VIII of said petition and the wording beginning with the word "petitioner" on

page 6, line 9, and ending with \$450,000” on page 6, line 16, claimant has no information or belief as to the matters therein alleged and basing its denial on such lack of information and belief, denies generally and specifically, each and every, all and singular, the allegations therein contained.

Further answering Article VIII of said petition and particularly the wording beginning with the word “and” on page 6, line 16, and ending with “\$176,500” on page 6, line 24, claimant denies generally and specifically, each and every, all and singular, the allegations therein contained.

#### IX.

Answering Article IX of said petition, claimant denies that petitioner is entitled to the benefit of limitation of liability as contended for and alleged in said Article IX and further denies that petitioner is entitled to the benefit of any [27] act of the Congress of the United States exonerating a ship owner from liability or granting a ship owner limitation of liability as alleged in Article IX, or otherwise, and further denies generally and specifically, each and every, all and singular, the allegations in said Article IX contained.

#### X.

Answering Article X of said petition, claimant denies generally and specifically, each and every, all and singular, the allegations therein contained.

#### XI.

Answering Article XI of said petition, damage claimant admits the allegations therein contained.

XII.

Further answering said petition, claimant alleges that the true facts are as follows:

(a) At all times herein mentioned, claimant was and now is a corporation organized and existing under and by virtue of the laws of the State of California.

(b) At all times herein mentioned, petitioner was and now is the owner and operator of the Steamship "Frej" which was and now is a general ship engaged in the common carriage of merchandise for hire between, amongst others, the Port of San Francisco, California, and the Port of Havana, Cuba.

(c) On or about April 29, 1947, claimant delivered to the said Steamship "Frej" and to petitioner, at the Port of San Francisco, certain shipments of rice in good order and condition, to be carried from said Port of San Francisco to the Port of Havana, Cuba, there to be delivered in like good order and condition as when shipped, to the order of claimant, arrival notice to be addressed to various consignees as hereinafter set forth, and that said shipments were made in consideration of an agreed freight in the total sum of One Hundred One Thousand Nine Hundred Seventy-seven [28] and 03/100 (\$101,977.03) Dollars, as hereinafter set forth, and in accordance with the terms of eighteen (18) bills of lading, as hereinafter set forth, then and there signed and delivered to claimant by the duly authorized agent and/or

representative of petitioner and of said Steamship "Frej".

The bills of lading numbers, the notify addressees, the description of each shipment and the freight paid on each shipment, are as follows:

B/L No.	Notify Addressee	Shipment	Freight
1	Hijos De Pio Ferra, S.A.....	6,000 cases) 7,000 sacks)	\$10,219.57
2	Hijos De Pio Ferra, S.A.....	8,000 cases	4,151.90
3	Hijos De Pio Ferra, S.A.....	14,000 sacks	14,211.79
4	Messrs. Aguilera, Manganon y Cia....	10,000 sacks	10,151.56
5	Messrs. Aguilera, Manganon y Cia....	1,000 sacks	1,016.06
6	Messrs. Aguilera, Manganon y Cia....	10,000 sacks	10,151.56
7	Messrs. Aguilera, Manganon y Cia....	10,000 sacks	10,151.56
8	Pinan Arexer y Cia, S-en-C.....	1,000 sacks	1,016.06
9	Pinan Arxer y Cia, S-en-C.....	2,000 cases	1,038.73
10	J. Perez, S. A.....	3,000 cases	1,557.59
11	J. Perez, S. A.....	3,000 sacks	3,046.17
12	F. Bonet-y-Cia, S-en-C .....	1,000 sacks	1,016.06
13	F. Bonet-y-Cia, S-en-C .....	1,000 sacks	1,016.06
14	Carvajal-y-Cia, S-en-C .....	8,000 cases	4,151.90
15	Carvajal-y-Cia, S-en-C .....	7,000 cases) 5,500 sacks)	9,215.85
16	Carvajal-y-Cia, S-en-C .....	13,500 sacks	13,704.26
17	Pelaez, Pirez, y Cia .....	6,000 cases	3,114.18
18	Pelaez, Pirez, y Cia .....	3,000 sacks	3,046.17

Thereafter, said Steamship "Frej" having on board said merchandise, sailed from the Port of San Francisco, en route to the Port of Havana, Cuba.

(d) While still in San Francisco Bay, and on May 6, 1947, [29] a fire started in the boiler-room of said vessel thereafter spreading to the engine-room and the No. 3 compartment. That the rice loaded in the No. 2 and No. 3 compartments was badly damaged and/or destroyed by fire, smoke



and water used to extinguish the fire. Thereafter, the entire cargo was discharged at San Francisco. Thereafter the cargo previously loaded in the Nos. 1, 4 and 5 compartments was reloaded in said vessel, having suffered some handling damage, and said vessel and the rice loaded in Nos. 1, 4 and 5 compartments are now proceeding to Havana, Cuba, to complete the voyage contracted for in said bills of lading. Some of the damaged rice discharged from No. 2 and 3 compartments was reconditioned, as much as reconditioning could be effected, and then sold, and some of said rice was sold in its condition as discharged from said vessel. That reconditioning charges, surveyors' fees, transportation and other expenses were incurred by claimant to minimize and fix the loss and/or damage aforesaid.

(e) A salvage claim of Fifty Thousand (\$50,000) Dollars has been made by The Shipowners and Merchants Tugboat Company, a corporation, and Shipowners and Merchants Towboat Co., Ltd., a corporation, and a libel has been filed in this court pursuant thereto under Proceeding No. 25008-R, in Admiralty, seeking recovery of the sum of Fifty Thousand (\$50,000) Dollars from the Steamship "Frej" and the cargo of rice described in Article XII(c) of this answer.

(f) Said fire was proximately caused by the design or neglect of petitioner in that

(1) The said vessel being unseaworthy at the time of her purchase by petitioner in March-April, 1947, owing to the large amount of free oil on

the tank tops immediately below the boilers and a large amount of free oil in the engine-room bilges, and a large amount of oil immediately forward and to the side of the boilers on the forward boiler-room bulkhead and the skin of the ship, petitioner took no steps at any time to eliminate this fire [30] hazard but petitioner sent said vessel on her said voyage in said condition, and

(2) Knowing the said vessel to be unseaworthy at the time of her purchase by petitioner in March-April, 1947, owing to a large amount of free oil on the tank tops immediately below the boilers, and a large amount of free oil in the engine-room bilges, and a large amount of oil immediately forward and to the side of the boilers on the forward boiler-room bulkhead and the skin of the ship, petitioner took no steps at any time to eliminate this fire hazard but petitioner sent said vessel on her said voyage in said condition, and

(3) Knowing the said vessel to be unseaworthy before and/or at the beginning of the voyage owing to a large amount of free oil on the tank tops immediately below the boilers, and a large amount of free oil in the engine-room bilges, and a large amount of oil immediately forward and to the side of the boilers on the forward boiler-room bulkhead and the skin of the ship, petitioner sent said vessel on her said voyage in said condition, and

(4) The said vessel being unseaworthy at the time of her said purchase due to insufficient fire-fighting equipment, petitioner took no steps at any

time to remedy this lack, but petitioner sent said vessel on her said voyage in said condition, and

(5) Knowing the said vessel to be unseaworthy at the time of her said purchase due to insufficient fire-fighting equipment, petitioner took no steps at any time to remedy this lack but petitioner sent said vessel on her said voyage in said condition, and

(6) Knowing the said vessel to be unseaworthy before and at the beginning of the voyage in that said vessel did not have on board and on duty competent engine-room officers and crew, [31] petitioner sent said vessel on her said voyage in said condition.

By reason of the premises, the fire from the starboard boiler was communicated to the oily fire-room bulkhead and/or the oily skin of the ship and/or to the free oil on the tank tops immediately below the starboard boiler and then to the free oil in the engine-room bilges, or having started, was not promptly extinguished.

(g) Many sacks and cases of rice originally loaded in No. 2 and 3 compartments were damaged and/or destroyed and the damaged rice retained and disposed of in San Francisco and Sacramento, California. The balance of the rice suffered some handling damage, the exact nature and extent of which is unknown to the claimant at this time. To the best information and belief of claimant, the loss and/or damage and/or expense as a result of said fire was and is:

## 38      *Rice Growers Association of California*

Rice damaged and/or destroyed by fire and/or smoke and/or water  
and sold at San Francisco and Sacramento:

B/L No.	Notify Addressee	C.I.F. Value
1, 2, 3	Hijos De Pio Ferra, S. A.....	\$ 81,760.31
4, 5, 6, 7	Aguilera, Marganon y Cia.....	154,249.59
8, 9	Pinan, Arxer & Cia, S. en C.....	438.22
10, 11	J. Perez, S. A.....	19,333.11
12, 13	F. Bonet y Cia.....	158.34
14,15, 16	Carvajal y Cia, S. en C.....	114,429.10
17, 18	Pelaez, Pirez y Cia.....	42.47

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\$370,411.14

Less salvage proceeds on the sale of said rice..... 129,191.26

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\$241,219.88

The following expenses were incurred in reconditioning,  
sale, survey, etc.:

California Dehydrating Co.—reconditioning.....	19,273.06
River Lines—Transportation to dehydrating plant.....	7,780.12
P. J. Seale & Associates—Commisison on sale of dam- aged rice .....	8,608.73
Genereaux & Hansen—Survey fee.....	100.00
Cost of cartons to repack.....	28.46
Department of Agriculture.....	318.70
Estimated Surveyors' fees.....	25,000.00

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\$302,328.95

Estimated handling damages which cannot be ascertained  
until the S.S. "Frej" arrives at Havana, Cuba, and the  
cargo in Nos. 1, 4 and 5 compartments is discharged  
and surveyed .....\$ 50,000.00

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Total.....\$352,328.95

Claimant reserves the right to amend the claim  
herein advanced at such time as the actual loss  
and/or expense and/or damage is ascertained, this  
not being possible at this time owing to the fact  
that the S.S. "Frej" and her cargo have not yet  
arrived at destination.



(h) Prior to the date hereof, and by written assignment, claimant became the owner of the damaged and destroyed cases and sacks of rice hereinabove mentioned with respect to all of the named addresses except Pinan, Arxer y Cia, S. en C., and is entitled to maintain the claim herein set forth.

On all shipments mentioned herein and including those in which Pinan, Arxer y Cia, S. en C., are the notify addressees, claimant has been authorized in writing to prosecute these claims.

(i) Claimant and/or the various notify addressees have performed all of the conditions precedent contained in the contract of carriage on their part to be performed. [33]

(j) By reason of the premises, claimant has sustained damage in the sum of **Three Hundred Fifty Two Thousand Three Hundred Twenty-eight and 95/100 (\$352,328.95) Dollars**, together with interest thereon at the rate of **Seven (7%) Percent per annum** from May 6, 1947, until paid.

### XIII.

Further answering said petition, claimant alleges:

(a) Repeats and realleges as fully as though herein set forth again at length, each and every and all of the allegations contained in sub-paragraphs (a), (b), (c), (d), (h) and (i) of Article XII of this answer.

(b) Said S.S. "Frej" and petitioner, and each of them, carelessly and negligently mixed said shipments of rice on loading in San Francisco, Cali-



formia. That said shipments were separately marked and are of different grades and values. That the reasonable cost of re-piling and segregating said shipments according to mark and grade and value as when delivered to said S.S. "Frej" and petitioner, and each of them, would be and is Three Thousand Nine Hundred Thirty-five and 08/100 (\$3,935.08) Dollars. By reason of the premises, claimant has sustained damage in the sum of Three Thousand Nine Hundred Thirty-five and 08/100 (\$3,935.08) Dollars, together with interest at the rate of Seven (7%) Percent per annum from May 6, 1947, until paid.

Wherefore, claimant prays that the petition for exoneration from or limitation of liability of petition be denied; that this court will decree the payment by said petitioner to claimant of the sum of Three Hundred Fifty-six Thousand Two Hundred Sixty-four and 03/100 (\$356,264.03) Dollars, and all sums assessed against said cargo on all salvage claims against said cargo, including but not limited to the salvage claims referred to in Article XII(c) of this answer, together with interest and costs; and that claimant may have such other and further relief as may be just.

/s/ GEORGE H. HAUERKEN,

/s/ HAUERKEN, AMES &

ST. CLAIR,

Proctors for Libellant. [34]

State of California,  
City and County of San Francisco—ss.

George H. Hauerken, being first duly sworn,  
deposes and says:

That he is one of the proctors for the Rice Growers Association of California, claimant herein; and he has read the foregoing answer and knows the contents thereof. That the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

The sources of his information and the grounds for his belief as to the matters therein stated to be alleged upon information and belief are statements and records contained in your affiant's office.

The reason this verification is not made by an officer of the claimant corporation is that none of the officers of said corporation are now within the County in which your affiant has his offices.

/s/ GEORGE H. HAUERKEN.

Subscribed and sworn to before me this 8th day  
of September, 1947.

(Seal)                      ALFRED D. MARTIN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

(Affidavit of Service by Mail.)

[Endorsed]: Filed Sept. 8, 1947.

[35]

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At a Stated Term of the United States District  
Court held in and for the Northern District of

California, Southern Division, at the United States Court Rooms, in the City and County of San Francisco, California, on the 6th day of October, 1947.

Present: The Honorable Louis E. Goodman, District Judge.

[Title of Cause.]

### ORDER NOTING DEFAULTS

This Court having heretofore issued a monition against all persons claiming damages for any and all loss, destruction, damage or injury either to persons or property, caused by or resulting from the fire aboard the said S.S. "Frej" which occurred in San Francisco Bay, California, on or about the 6th day of May, 1947, or for any loss, destruction, damage or injury arising out of or incurred on the voyage of the said S.S. "Frej" during which said fire occurred, which said voyage is alleged in the petition on file herein to have commenced on or about the [36] 6th day of May, 1947, and to have ended in the Port of San Francisco on the 8th day of May, 1947, citing them and each of them to appear before this Court and make due proof of their respective claims on or before the 6th day of October, 1947, at ten o'clock a.m. of said day; and

It Appearing from the affidavit of publication on file herein that citation and notice of monition was duly published pursuant to the order of this Court in *The Recorder*, a newspaper published in the City and County of San Francisco, once each week until the return day of said monition, and that

the date of the first publication of said citation and notice of monition was August 21, 1947; and

It Further Appearing by the return filed herein by the United States Marshal for the Northern District of California that a copy of said monition and a copy of the order for monition were served more than thirty days prior to this date upon the Rice Growers Association of California, a corporation, the Shipowners & Merchants Tugboat Company, a corporation, and Shipowners & Merchants Towboat Company, Limited, a corporation, and that each of said corporations was at the time of the service of said monition and order for monition cited and admonished by the United States Marshal to appear before said Court and to file and make due proof of their respective claims before Francis St. J. Fox, United States Commissioner for the Northern District of California, at his office in the Post Office Building at 7th and Mission Streets, in the City and County of San Francisco, Northern District of California, on or about the 6th day of October, 1947, at ten o'clock a.m. of said day, otherwise they would be defaulted and debarred from participation in this suit; and [37]

It Further Appearing by the report of said Commissioner filed herein that the following claim has been presented to and filed with him, viz.:

Claim of Rice Growers Association of California, a corporation, for damages in the total sum of \$356,264.03, with interest and costs, filed by Messrs. Hauerken, Ames & St. Clair, proctors for said Rice Growers Association of California;



and that no other claim has been presented to or filed with said Commissioner; and

It Further Appearing that pursuant to stipulation of counsel, it has been ordered by this Court that the Shipowners & Merchants Tugboat Company, a corporation, and Shipowners & Merchants Towboat Company, Limited, a corporation, being represented herein by Messrs. Wright & McKeon, may have to and including the 16th day of October, 1947, within which to present herein their claims and answers;

Now, on motion of Graham & Morse, proctors for petitioner,

It Is Ordered that the defaults of any and all person or persons claiming damages of said petitioner or against said steamship "Frej" for any and all loss, destruction, damage or injury arising out of or occurring on the voyage of said S.S. "Frej" which is stated to have ended at the Port of San Francisco on the 8th day of May, 1947, or by reason of the matters set forth in said petition, other than said Rice Growers Association of California, a corporation, and Shipowners & Merchants Tugboat Company, a corporation, and Shipowners & Merchants Towboat Company, Limited, a corporation, who have either filed a claim an answer or obtained an extension of time within which to do so, all as hereinbefore set forth, be and the same are hereby entered; and

It Is Further Ordered that all issues raised by the petitioner herein and the answer thereto now on file, or any answer or [38] answers which may



hereafter be filed within the time granted by this Court, as hereinbefore set forth, or any additional time which may be granted by this Court, shall stand for trial before this Court according to the rules and practice thereof; and

It Is Further Ordered that all other proceedings on any and all proofs of claims now on file, or which may be hereafter filed within the time granted by this Court, as hereinbefore set forth, or within any additional time, which may be granted by this Court, be and they are hereby stayed until the trial and determination of this suit.

Dated San Francisco, California, October 8, 1947.

LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed Oct. 8, 1947.

[39]

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[Title of District Court and Cause.]

### STIPULATION RE VALUE

It is hereby stipulated by and between petitioner and claimants, in lieu of submitting evidence to Commissioner Fox under and pursuant to the "Order of Reference" herein dated August 4, 1947, that the following constitute the facts based upon which this Honorable Court shall fix the amount of the limitation of liability fund under the provisions of R.S. 4281 et seq (46 U.S.C.A. paragraphs 181-195):

1. The Steamship "Frej", owned and operated by petitioner, loaded a cargo of about 5060 tons of rice shipped by the Rice Growers Association of California for carriage from San Francisco, California, to Havana, Cuba, pursuant to the terms, provisions and conditions of bills of lading, a true copy whereof is attached hereto as Exhibit "A" and hereby incorporated. The ship, with said rice cargo aboard, commenced her voyage and sailed from her dock in San Francisco at 8:00 p.m. on the evening of May 6, 1947. Within an hour thereafter and while still in San Francisco Bay, a fire broke out aboard the ship. The fire was extinguished during the early morning hours of May 7, 1947, and the ship returned to her dock at San Francisco, where all of the cargo was unloaded, the unloading having been undertaken without prejudice to, but for the best interests of all concerned and was completed on May 14, 1947, at 5:00 o'clock a.m.

2. After the fire, the ship required repairs to fit her for sea. Accordingly, specifications for repairs to correct damage to the ship resulting from the fire were prepared and bids were taken thereon. The following bids were received: [40]

(a) General Engineering and Dry Dock Company, Alameda, California—\$122,638.00—48 working days.

(b) Moore Drydock Company, Oakland, California—\$167,500.00—20 working days.

(c) Bethlehem Steel Company, San Francisco, California —\$154,780.00—40 working days.

(d) Todd Shipyard Corporation, Los Angeles, California—\$139,994.00—35 working days.

3. The bid of General Engineering and Dry Dock Company was accepted by petitioner and on or about May 23, 1947, the ship was taken to the repair yard of the General Engineering and Dry Dock Company at Alameda, California, for these repairs, and the repair work was begun on May 26, 1947.

4. In addition to work required in the specifications for which General Engineering and Dry Dock Company bid the sum of \$122,638.00, additional damage as the result of the fire was discovered as work progressed and was repaired at a cost of \$45,476.73. A minor item in the original specifications was deleted and the actual cost on the work covered by the original repair specifications totaled \$122,022.66. The aggregate cost of repairing damages to the ship resulting from the fire was \$167,498.99. During the time said repairs were being effected, betterments to the ship for the owner's account were effected in the amount of \$17,349.40. All repairs and betterments were completed on August 4, 1947.

5. Rice in Holds No. 2 and No. 3, amounting to about 1828 tons, having been affected and damaged by water, smoke and fire, was retained in the San Francisco Bay Region and disposed of there. About one hundred twenty-two tons of rice formerly loaded in Hold No. 2 and about 3110 tons of rice formerly loaded in Holds No. 1, 4 and 5, aggregating about 3232 tons of rice, were in condition to be carried and were carried to Havana on the basis hereinafter mentioned in Article 10 hereof.

6. On June 6, 1947, Rice Growers Association of California filed a libel in personam and in rem against the S.S. Frej, her engines, boilers, boats, machinery, tackle, apparel and furniture, etc., and against Rederiaktiebolaget Frode, a corporation, in the District Court of the United States, Northern District of California, Southern Division, under Proceeding No. 24958-G. Pursuant thereto, the vessel was seized and reduced to the possession of the United States Marshal of said Court and for *Said* ~~and~~ District and remained in his possession from June 6, 1947 to and including August 9, 1947.

7. On June 19, 1947, J. H. Winchester & Co., Inc., on behalf of the ship and her owners, cabled notice of abandonment of the voyage to Rice Growers Association of California and to the various consignees in Cuba. A copy of said cable is attached hereto marked Exhibit B and hereby incorporated.

8. On July 17, 1947, Rice Growers Association of California filed an amendment to its libel in said proceeding No. 24958-G and which said libel and amendment to libel is hereby incorporated.

9. On July 25, 1947, petitioner filed a petition for limitation of liability in the District Court of the United States for the Northern District of California, Southern Division, under proceeding No. 25003-G, and which petition is hereby incorporated.

10. Subsequent to June 19, 1947, a dispute having arisen between the parties resulting from the sending of notice of abandonment referred to above



in Article 7 and petitioner's <sup>Re Fusal</sup> ~~refused~~ to reload and carry the rice to Havana, negotiations were entered into between petitioner and cargo interests to have the said 3232 tons of rice carried by the ship to Havana, which negotiations resulted in a written agreement, a copy of which agreement is attached hereto, [42] marked Exhibit "C" and hereby incorporated.

11. The ship left General Engineering and Dry Dock Co. on August 2, 1947 at 8:50 a.m. and repairs were completed in San Francisco on August 4, 1947.

12. Pursuant to said agreement (Exhibit "C") and between August 4 and August 8, 1947, the said about 3232 tons of rice formerly loaded in Holds No. 1, 2, 4 and 5 were reloaded on the ship at San Francisco. On August 11, 1947, the ship sailed from San Francisco for Havana with only said 3232 tons of August 31, 1947, and completed discharge of the said 3232 tons of rice on September 18, 1947.

13. For limitation of liability values, the following values are stipulated at the times noted:

rice cargo aboard and she arrived in Havana on



			Freight
			Aggregate bill of lading charges
			total \$101,977.03, which in-
			cluded the following items:
May 6, 1947	Vessel \$255,000	Stores \$16,845	Ocean freight .....\$93,104.00
(Prior to fire)			Havana handling fee 5,060.03
			Manifest fee ..... 18.00
			Handling chgs. at
			San Francisco ..... 2,024.01
			Wharfage at San
			Francisco ..... 1,770.99
May 8, 1947	106,000	8,329	“ “ “
June 19, 1947	117,000	3,000	“ “ “
Aug. 4, 1947	275,000	21,825	“ “ “
Sept. 18, 1947	275,000	16,005	“ “ “

The vessel was purchased in Seattle, Washington by petitioner, pursuant to contract dated March 4, 1947, from Griffiths Steamship Company for the price of \$277,500. In addition thereto, pursuant to said contract, petitioner paid for unbroached stores, supplies and fuel oil the sum of \$8,632.61.

Dated San Francisco, the 28th day of May, 1948.

GEORGE H. HAUERKEN,  
HAUERKEN, AMES &  
ST. CLAIR,

Proctors for Rice Growers Association of Calif.  
GRAHAM & MORSE,  
CLARENCE G. MORSE,  
Proctors for Petitioner.

WRIGHT & McKEON,  
Proctors for The Shipowners & Merchants Tugboat  
Company and Shipowners & Merchants Towboat  
Co., Ltd.

(Here follows Exhibits B and C.)

EXHIBIT "B"

Cable sent June 19, 1947 by J. H. Winchester & Co., Inc. to receivers and shippers of the rice cargo in connection with the abandonment of the voyage.

"Frej on account various matters including but not being limited to extraordinary delays and expenses arising as a result of May 6, 1947 fire and acting under authority of applicable bills lading and otherwise owner and Master have elected to abandon voyage and you are hereby notified that voyage of the S.S. "Frej" from San Francisco to Havana, Cuba is hereby abandoned. You are further notified that the rice is at your expense and risk and delivery thereof may be obtained by you immediately in San Francisco upon your posting satisfactory general average security."

EXHIBIT "C"

Dated July 26, 1947.

Frej—May, 1947

Memorandum of agreement re forwarding sound cargo.

1. Sound rice discharged from Frej will be reloaded and carried by the Frej under the terms of the original bills of lading without additional freight, ship bearing all loading and discharging costs which would be paid by the ship under the original bills of lading if it were now for the first time receiving the sound rice for such carriage.

2. Owners of sound cargo will pay the ship Ten Thousand (\$10,000.00) Dollars, which sum is not to be included in determining limitation fund nor the contributory values in general average. Owners and underwriters of sound rice waive all claims they may have to recover any part of said \$10,000.

3. The second cause of action in the pending libel by cargo against ship (for recovery of freight in the amount of \$95,000.00) will be dismissed without prejudice.

4. Storage charges covering period sound rice has been on Pier 45-C will be paid in the first instance by the Frej, ultimately liability for such item to abide decision in pending or future litigation and/or determination of general average liability.

5. Cost of segregating and classifying sound rice on dock will be paid in the first instance by cargo, ultimate liability for such item to abide decision in pending or future litigation and/or determination of general average liability.

6. The carrying on of the cargo and/or this agreement shall in no way prejudice any right or rights which either party now has and shall not affect the present status quo of the purported abandonment of the voyage at San Francisco, California.

7. Cargo has now furnished full general average security and the Frej and her owners will not require further general average security.

### Method of Carrying Out Agreement

The procedure to release the vessel and to carry out the terms of the above agreement shall be as follows:

1. An ad interim stipulation shall be executed by the parties in the limitation proceedings providing for a bond in the face value of \$290,250.00 without interest.

2. The parties in the limitation proceedings will stipulate for the issuance of a restraining order applying to all pending actions except the second cause of action in the cargo libel (freight in the amount of \$95,000.00) and the wage claims of Eriksson and Hamalainen.

3. The parties will stipulate that an order may issue allowing the vessel to move from her present position to Pier 45-C, San Francisco, remaining within the possession of the Marshal, but without a keeper on board.

4. The sound rice will be loaded aboard the vessel in accord with the terms of the foregoing agreement, with stowage approved by surveyors Genereaux & Hansen or other surveyors mutually satisfactory to all parties.

5. When the sound rice is fully loaded on the vessel, and the vessel owners have complied with all other provisions of the foregoing agreement, cargo owners will file a dismissal without prejudice of the second cause of action in the cargo libel.

6. When the vessel has cleared the port of San Francisco with said sound cargo on board, cargo will immediately pay to J. H. Winchester & Co.,

Inc., agents for the Frej, the sum of Ten Thousand (\$10,000.00) Dollars as provided in the foregoing agreement.

[Endorsed]: Filed May 26, 1948.

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In the United States District Court for the Northern District of California, Southern Division.

No. 25,003-G

In the Matter of the Petition of REDERIAKTIE-BOLAGET FRODE, a corporation, for exoneration from or limitation of liability of the owner of the Steamship Frej:

ORDER FIXING AMOUNT OF  
LIABILITY FUND

In this proceeding for the limitation of liability of the owners of the Steamship "Frej," the Court is called upon to fix the amount of liability fund under the provisions of 46 U.S.C. Sec. 181-195.

I am satisfied that June 19, 1947, is the date upon which values should be fixed. *Place v. Norwich and New York Transportation Co.*, 118 U. S. 468; *Great Western*, 118 U. S. 520; *Pacific Coast Co. v. Reynolds*, 114 Fed. 877, (9 Cir.); *Boston Marine Insurance Co. v. Metropolitan Redwood Lumber Co.* (9 Cir.) 197 Fed. 703.

Accordingly the Court fixes the value of the vessel for the purposes of this proceeding



at .....	\$117,000.00
the value of its stores at.....	3,000.00
	<hr/>
	\$120,000.00
the value of earned freight at.....	93,104.00
	<hr/>
Total .....	\$213,104.00

Dated August 5, 1948.

LOUIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed Aug. 5, 1948. [46]

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[Title of District Court and Cause.]

PETITION FOR APPEAL OF DAMAGE  
CLAIMANT RICE GROWERS ASSOCIA-  
TION OF CALIFORNIA, A CORPORATION

Rice Growers Association of California, a corporation, damage claimant herein, being aggrieved by the Order Fixing Amount of Liability Fund made and entered herein on the 5th day of August, 1948, by the United States District Court, claims an appeal from said order and prays that said appeal may be allowed.

Dated this 20th day of August, 1948.

/s/ GEORGE H. HAUERKEN,  
/s/ HAUERKEN & ST. CLAIR,

Proctors for Damage Claimant Rice Growers Association of California, a corporation.

[Endorsed]: Filed Aug. 20, 1948. [67]

[Title of District Court and Cause.]

NOTICE OF GENERAL APPEAL

To: Rederiaktiebolaget Frode, a corporation, petitioner herein, and to Clarence G. Morse, Esq. and Messrs. Graham & Morse, its Proctors:

Please take notice that Rice Growers Association of California, a corporation, damage claimant herein, hereby appeals to the next United States Circuit Court of Appeals for the Ninth Circuit from the Order Fixing Amount of Liability Fund made and entered by the above entitled Court on the 5th day of August, 1948, and from each and every part of said order.

Dated this 19th day of August, 1948.

/s/ GEORGE H. HAUERKEN,

/s/ HAUERKEN & ST. CLAIR,

Proctors for Damage Claimant and Appellant Rice Growers Association of California, a corporation. [68]

(Acknowledgment of Service.)

[Endorsed]: Filed Aug. 20, 1948.

[69]

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[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

Pursuant to the petition for appeal of Rice Growers Association of California, a corporation, damage claimant herein, dated August 20th, 1948, and presented this date to the Court:

It Is Hereby Ordered that the appeal of damage claimant, Rice Growers Association of California, a corporation, from the Order Fixing Amount of Liability Fund made and entered herein on August 5th, 1948, be allowed as prayed for and that said Rice Growers Association of California, a corporation, file an appeal bond of a corporate surety in the amount of Seventy-five Hundred (\$7500.00) Dollars, and that, upon the filing of said bond, all proceedings under said order be stayed.

Dated this 20th day of August, 1948.

/s/ LOUIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed Aug. 20, 1948. [70]

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[Title of District Court and Cause.]

#### ASSIGNMENT OF ERRORS

Rice Growers Association of California, a corporation, damage claimant and appellant herein, hereby assigns error in the proceedings, orders and decisions of the District Court in the above entitled cause as follows:

1. The Court erred in holding that June 19th, 1947, is the date as of which the limitation of liability fund is to be fixed.

2. The Court erred in holding that for the purpose of said limitation of liability fund the value of the Steamship "Frej" was to be fixed at One Hundred Seventeen Thousand (\$117,000.00) Dollars.

3. The Court erred in holding that for the purpose of said limitation of liability fund the value of the pending freight of said Steamship "Frej" was to be fixed at Ninety-three Thousand One Hundred Four (\$93,104.00) Dollars. [71]

4. The Court erred in holding that for the purpose of said limitation of liability fund the value of the stores of the Steamship "Frej" was to be fixed at Three Thousand (\$3,000.00).

5. The Court erred in fixing the total amount of the limitation of liability fund at Two Hundred Thirteen Thousand One Hundred Four (\$213,104) Dollars.

6. The Court erred in holding that the voyage of the Steamship "Frej" terminated in San Francisco, California, on June 19th, 1947.

7. The Court erred in holding that Rederiaktiebolaget Frode, a corporation, petitioner and appellee herein, was justified, as owner of the Steamship "Frej" in terminating her voyage in San Francisco, California, on June 19th, 1947.

8. The Court erred in failing to hold that the voyage of the Steamship "Frej" ended in Havana, Cuba, on September 18th, 1947.

9. Assuming that the Court was justified in fixing the amount of the limitation of liability fund as of a date earlier than the date of the end of the voyage (September 18th, 1947), the Court erred in adopting June 19th, 1947, as such date, instead of August 4th, 1947, the date as of which said Rederiaktiebolaget Frode became entitled to claim the benefits of the limitation of liability statute (46

U.S.C., Sec. 181-195) by posting its ad interim stipulation for value.

Dated this 19th day of August, 1948.

/s/ GEORGE H. HAUERKEN,

/s/ HAUERKEN & ST. CLAIR,

Proctors for Damage Claimant and Appellant—  
Rice Growers Association of California, a corporation. [72]

(Acknowledgment of Service.)

[Endorsed]: Filed Aug. 20, 1948.

[73]

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[Title of District Court and Cause.]

STIPULATION AS TO SERVICE OF PAPERS  
ON APPEAL

It Is Hereby Stipulated By and Between the parties hereto, through their respective proctors, that there need be no service made upon The Shipowners and Merchants Tugboat Company, a corporation, and Shipowners and Merchants Towboat Co., Ltd., a corporation, salvage claimants herein, or upon Joseph B. McKeon, Esq., and Messrs. Wright & McKeon, their proctors, of any notices, pleadings, briefs and/or papers of whatsoever nature heretofore filed or hereafter to be filed herein by Rice Growers Association of California, a corporation, damage claimant and appellant herein, and by Rederiaktiebolaget Frode, a corporation, petitioner and appellee herein, in connection with the appeal taken by said Rice Growers



Association of California from the Order Fixing Amount of [77] Liability Fund made and entered by the above entitled Court on the 5th day of August, 1948.

Dated this 24th day of August, 1948.

/s/ JOSEPH B. McKEON,

/s/ WRIGHT & McKEON,

Proctors for Salvage Claimants The Shipowners and Merchants Tugboat Company and Ship-owners and Merchants Towboat Co., Ltd.

/s/ GEORGE H. HAUERKEN,

/s/ HAUERKEN & ST. CLAIR,

Proctors for Damage Claimant and Appellant Rice Growers Association of California.

/s/ CLARENCE G. MORSE,

/s/ GRAHAM & MORSE,

Proctors for Petitioner and Appellee Rederiaktiebolaget Frode.

[Endorsed]: Filed Aug. 25, 1948.

[78]

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[Title of District Court and Cause.]

# STIPULATION AS TO APOSTLES ON APPEAL

It is hereby stipulated by and between Rice Growers Association of California, a corporation, damage claimant and appellant herein, and Rederiaktiebolaget Frode, a corporation, petitioner and appellee herein, through their respective proctors and pursuant to Rule 37(4) of the Rules of the

United States Circuit Court of Appeals for the Ninth Circuit, that the Apostles on Appeal in the above entitled cause shall include the following:

1. **Petition for Limitation of Liability.**
2. Answer of Rice Growers Association of California to Petition for Limitation of Liability.
3. Order of Reference for Appraisement.
4. Stipulation Re Amount of Ad Interim Stipulation of Value Pending Appraisement.
5. Order for Ad Interim Stipulation. [79]
6. Ad Interim Stipulation for Value Pending Appraisement.
7. Amended Order for Monition, Fixing Time and Place for Filing Claims and Restraining Actions.
8. Order Noting Defaults.
9. Stipulation Re Value, dated and filed May 28th, 1948, including Exhibits B and C attached thereto.
10. Order Fixing Amount of Liability Fund.
11. Findings of Fact and Conclusions of Law (proposed by Rice Growers Association of California).
12. Final Decree (proposed by Rice Growers Association of California).
13. Findings of Fact and Conclusions of Law and Final Decree as Proposed by Petitioner.
14. Findings of Fact and Conclusions of Law (proposed by Petitioner).
15. Final Decree (proposed by Petitioner).
16. Order Exonerating Ad Interim Stipulation for Value, Releasing Sureties and Principals

Thereon, and Approving Stipulation for Value.  
(proposed by Petitioner.)

17. Reporter's Transcript of the proceedings at the hearing had before the Honorable Louis E. Goodnan on the 16th day of August, 1948.

18. Petition for Appeal.

19. Order Allowing Appeal.

20. Bond on Appeal Staying Execution.

21. Notice of General Appeal.

22. Citation on Appeal.

23. Assignment of Errors.

24. Stipulation as to Service of Papers on Appeal.

25. Praecipe for Apostles on Appeal.

26. Stipulation as to Apostles on Appeal.

27. Copy of the Docket of the Clerk of the District Court. [80]

It Is Hereby Further Stipulated that

(a) The Libel

(b) The Amendment to Libel

which are incorporated by reference in and are referred to in paragraph (6) and paragraph (8) of the above mentioned Stipulation Re Value, dated May 28th, 1948, may be omitted from the record.

It Is Hereby Further Stipulated that the copy of the Bill of Lading issued by Rederiaktiebolaget Frode to Rice Growers Association of California and attached as Exhibit A to both the above mentioned Petition for Limitation of Liability and the above mentioned Stipulation Re Value, dated May 28th, 1948, need not be copied into the Record on Appeal, but that the copy of said Bill of Lading

attached to the original of said Stipulation Re Value, dated May 28th, 1948, may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit and deemed a part of the Record on Appeal herein.

Dated August 30th, 1948.

/s/ CLARENCE G. MORSE,

/s/ GRAHAM & MORSE,

Proctors for Petitioner and Appellee, Rederiaktiebolaget Frode.

/s/ GEORGE H. HAUERKEN,

/s/ HAUERKEN & ST. CLAIR,

Proctors for Damage Claimant and Appellant, Rice Growers Association of California.

[Endorsed]: Filed Aug. 31, 1948.

[81]

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[Title of District Court and Cause.]

PRAECIPE FOR APOSTLES ON APPEAL

To the Clerk of the above entitled Court:

Rice Growers Association of California, a corporation, Damage Claimant and Appellant herein, having appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the Order Fixing Amount of Liability Fund made and entered herein by the above entitled Court on the 5th day of August, 1948, you are hereby requested to prepare and certify Apostles on Appeal, in accordance with the Stipulation as to Apostles on Appeal entered into on the 30th day of August, 1948, by and between Rice Growers Association of California, a corporation, Damage Claimant and Appellant herein, and Rederiaktiebolaget Frode, a cor-

poration, Petitioner and Appellee herein, and filed herein on the 31st day of August, [82] 1948, and to file said Apostles on Appeal in said Appellate Court in due course.

Dated this 30th day of August, 1948.

/s/ GEORGE H. HAUERKEN,  
/s/ HAUERKEN & ST. CLAIR,  
Proctors for Damage Claimant and Appellant, Rice  
Growers Association of California.

(Acknowledgment of Service.)

[Endorsed]: Filed Aug. 31, 1948. [83]

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[Title of District Court and Cause.]

### ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellant herein may have to and including November 8, 1948, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated September 28, 1948.

LOUIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed Sept. 28, 1948. [84]



District Court of the United States  
Northern District of California

CLERK'S CERTIFICATE

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 90 pages, numbered from 1 to 90, inclusive, contain a full true, and correct transcript of the records and proceedings in the case of In the Matter of Rederiaktiebolaget Frode, a corporation, for exoneration from or limitation of liability as owner of the steamship "Frej", No. 25003-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$15.00 and that the said amount has been paid to me by the Attorney for the appellant herein. And I further Certify that annexed hereto is the original Citation on Appeal and Admission of Service.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 29th day of October, A. D. 1948.

(Seal)

C. W. CALBREATH,  
Clerk.

[Title of District Court and Cause.]

CITATION ON APPEAL

United States of America—ss.

The President of the United States of America to Rederiaktiebolaget Frode, a corporation, petitioner and appellee herein, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeal for the Ninth Circuit to be held at the City of San Francisco, in the State of California, within forty (40) days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern District of California, wherein Rice Growers Association of California, a corporation, is damage claimant and appellant, and you are appellee, to show cause, if any there be, why the Order rendered against the said appellant, as in the said Order Allowing Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Louis E. Goodman, United States District Judge for the Northern District of California, this 20th day of August, 1948.

/s/ LOUIS E. GOODMAN,  
United States District Judge.

Attest:

(Seal)      /s/ C. W. CALBREATH,  
Clerk.

(Acknowledgment of Service.)

[Endorsed]: Filed Aug. 25, 1948.

In the Southern Division of the United States  
District Court for the Northern District of  
California

Before: Hon. Louis E. Goodman, Judge.

In Admiralty—25,003-G

In the Matter of the Petition of Rederiaktiebolaget  
Frode, a corporation, for exoneration from or  
limitation of liability as owner of the Steamship  
Frej.

### REPORTER'S TRANSCRIPT

Monday, August 16, 1948

2:45 o'clock p.m.

Appearances: For the Petitioner: Clarence G.  
Morse, Esq. For the Respondent: George H. Hauer-  
ken, Esq.

The Clerk: In re petition of Frode.

Mr. Hauerken: If it please the Court, this is a  
limitation of liability proceeding.

Mr. Morse: If it please the Court, we are the  
moving parties in this matter.

Mr. Hauerken: I don't know whether counsel  
is the moving party, but let him start if he wishes  
to.

Mr. Morse: This is in connection with the limi-  
tation of liability bond, this matter.

On August 5th this Court made a ruling, a  
decision, fixing the limitation fund at two hundred  
thirteen thousand dollars. Because Mr. Hauerken  
indicated he was planning to appeal from that  
motion, we made a formal motion at this time

rather than bringing in a bond in the amount fixed in the order, a bond for the approval of the Court. Perhaps in view of the fact that Mr. Hauerken is now indicating that he is planning to appeal, it might be inappropriate at this time to reduce the bond; so that I am perfectly frank to say that I think that the motion we have here is meritorious, but if Mr. Hauerken is sincere in his statement that he is going to appeal, the probabilities are that if he makes a request for stay, the application would be granted pending his filing his appeal.

The Court: Well, what motion is it?

Mr. Morse: I have a motion for an order approving a new bond in the amount fixed, some two hundred thirteen odd thousand dollars, and an application for an order exonerating the bond.

The Court: Of course if Mr. Hauerken is going to appeal, I think he is entitled to have the status quo.

Mr. Morse: That is why I say we are sort of in betwixt and between on this motion.

The Court: Is that all that is before the Court?

Mr. Morse: That is all that is before the Court on a formal motion, yes sir.

Mr. Hauerken: As a matter of fact, it probably shouldn't be before the Court on a formal motion.

Mr. Morse: Ordinarily, I would have presented the matter to the Court in the chambers.

Mr. Hauerken: On August 5th your Honor ordered a judgment fixing the liability fund in this limitation proceeding, having also last August

made an order for an ad interim stipulation and referred the matter to a commissioner for the purpose of hearing. Subsequent thereto we entered into an agreed statement of fact which was submitted to your Honor in lieu of taking the matter up with Mr. Fox, and your Honor made this order fixing the amount of liability fund. That order is dated August 5th.

We intend to appeal. Now this order is either an interlocutory order which requires a notice of appeal within 15 days, or it is a final order which requires a notice of appeal within 3 months. I think that it is a final order, but I want to be certain and see to it that our notice of appeal is on file within the 15 days from August 5th.

Now your Honor did not indicate in this order whether or not the findings should be filed. We did some research work, and while we found some civil cases that stated that where a matter is heard on an agreed statement of fact that findings should not be had, yet we found no admiralty cases. We found an admiralty case which went up on appeal on contested issues, which was reversed on the sole ground that no findings of fact were entered in to. So, not wanting to find ourselves in the Appellate Court and having the Appellate Court say, "No judgment has been entered, therefore you are premature," we prepared and submitted to counsel a stipulation that the order that your Honor made might be deemed to be the findings of fact and conclusions of law and decree. Counsel refused to sign that stipulation; I have his letter here saying that he refused to do it.



We waited the five days prescribed by the rules, for counsel to submit proposed findings of fact, and he not having done so, we then, the day after, lodged with the Court our proposed findings of fact and conclusions of law and our proposed decree. There is no provision for the—shall we say—successful litigant thereafter to file a proposed findings of fact, but they were served on me this morning after Court had started.

So the matter before the Court, and as formally as we could present it, was that after this five day period had elapsed wherein the other side might propose to your Honor findings of fact and conclusions of law, we lodged them with the Clerk and they are now before your Honor. In that, we suggest that there should be a stay of execution until the appeal on this particular matter has been concluded.

On Thursday, and not five days before the date of this hearing, counsel presented a formal motion wherein they purport to exonerate the old bail, yet not within the five day time. We waived that; therefore there is the only pretence of formality in this matter being on the law and motion calendar.

As I say, we are going to file a notice of appeal, and I would like to be in a position to do that within 15 days. So your Honor can either reject everything and conclude that the order that you made is all that needs to be done, in which event we will appeal from that order—and the Appellate Court might say that that is not formal enough.

The Court: We can take care of that right now by making the proper record. However, in these limitation of liability proceedings, there is more to it than just the Court fixing the amount.

Mr. Hauerken: Oh yes.

The Court: In this very proceeding the matter of exoneration has to be determined, and that is the trial of the case, isn't it really?

Mr. Hauerken: Yes. All your Honor did, your Honor made something in the nature of a memorandum on the fixing of the value at so much. But you did not make any order reducing the bond; therefore there is really nothing for us to appeal. That is, it may be so argued.

The Court: Let's assume that we went on and determined the matter of exoneration of liability, and irrespective of which way it would go, either side would take an appeal. Suppose you were the appealing party, for argument's sake. You could still raise in that appeal the same question.

Mr. Hauerken: Here is the practical difficulty. Right now Sweden enjoys a certain amount of freedom, even with their exchange difficulties. And in spite of that exchange, we are going after this bond if we are successful in this litigation. Right now Sweden is not within the Iron Curtain; maybe a year or so from now she may be. We are not interested so much in a personal judgment against this Swedish Steamship Company as we are in securing a judgment against the Royal Indemnity Company, which is the guarantor on this bond. It is a very practical difficulty.

The Court: At least to the extent of the ad interim stipulation, the status quo could be maintained?

Mr. Hauerken: If the ad interim stipulation were maintained, that would suit me fine.

The Court: Well I would think Mr. Morse practically agreed, unless I misunderstood him, with that, that you were entitled, as I think any litigant would be under the circumstances to a stay of the actual execution so that eventually if it is determined that this order which I made is incorrect, to the extent of the ad interim stipulation you would be protected during the appeal.

Mr. Hauerken: The only further order that I want, your Honor, is this: In this proposed findings of fact, we have incorporated by reference the agreed statement of facts, and in the conclusions of law we have purported to say that which your Honor has done. I would prefer to appeal from a formal order predicated upon the findings of fact and conclusions of law, and then to appeal from this.

The Court: How can I make any findings of fact in a case in which the facts are stipulated to and where there was by agreement submitted to the Court merely a question of law as to the time at which the value should be affixed?

Mr. Hauerken: I think that you are entirely correct in that, your Honor, but the Appellate Courts sometimes say, "You should have done this." Now if your Honor will either do or not do, and whatever you do, we are satisfied with it. I

will put it that way, that is, so long as we get a stay.

The Court: Well I will say for the record now, for whatever protection it will afford to the aggrieved party, that I intend the order which I filed as being final, that I did not regard it as necessary to file any findings of fact in the matter because of the fact that the precise issue was submitted to me on a stipulation of facts, and by agreement the Court determined a matter of law, and for that reason, this Court states this is the order that the Court made, that it doesn't need any findings of fact and that in the event counsel wish to appeal, that they are entitled to, and the Court holds that they may, appeal from that same order of the Court. Now that is the intention of the Court, so that my colleagues in the Appellate Court, when they read this statement of what took place today, may find no confusion in their minds. That is what this Court intended.

Now that is the basis upon which the Appellate Court has ruled in several of these cases heretofore where there has been doubt.

\* \* \* \*

### CERTIFICATE OF REPORTER

I, (Illegible), Official Reporter, pro tem certify that the foregoing 14 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to type-writing, to the best of my ability.

[Endorsed]: Filed Sept. 15, 1948.



[Endorsed]: No. 12074. United States Court of Appeals for the Ninth Circuit. Rice Growers Association of California, a Corporation, Appellant, vs. Rederiaktiebolaget Frode, a Corporation, Owner of the Steamship "Frej", Appellee. Apostles on Appeal. Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed October 29, 1948.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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[Title of District Court and Cause.]

STIPULATION SUPPLEMENTING STIPU-  
LATION AS TO APOSTLES ON APPEAL  
AND AMENDING PRAECIPE FOR APOS-  
TLES ON APPEAL

It Is Hereby Stipulated by and between Rice Growers Association of California, a corporation, Damage Claimant and appellant herein, and Rederiaktiebolaget Frode, a corporation, Petitioner and appellee herein, through their respective proctors and pursuant to Rule 37(4) of the Rules of the United States Court of Appeals for the Ninth Circuit, that the claim filed herein on September 8th, 1947, by said Rice Growers Association of California shall be added to the Apostles on Appeal in the above-entitled cause.



It is hereby Further Stipulated that said Apostles on Appeal shall include this Stipulation.

And it is hereby Further Stipulated that the Praecipe for Apostles on Appeal heretofore filed herein and directed to the Clerk of the above-entitled Court shall be deemed amended to the extent necessary to carry out the terms of this Stipulation.

Dated this 23rd day of December, 1948.

/s/ GEORGE H. HAUERKEN,

/s/ HAUERKEN & ST. CLAIR,

Proctors for Rice Growers Association of California Damage Claimant and Appellant.

/s/ CLARENCE G. MORSE,

/s/ GRAHAM & MORSE,

Proctors for Rederiaktiebolaget Frode Petitioner and Appellee.

[Endorsed]: Filed December 23, 1948. Paul P. O'Brien, Clerk.

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[Title of District Court and Cause.]

### CLAIM

And now comes the Rice Growers Association of California in the above matter and makes claim against the above named Rederiaktiebolaget Frode, a corporation, and of said S.S. "Frej", as follows:

(a) At all times herein mentioned, claimant was and now is a corporation organized and existing under and by virtue of the laws of the State of California.

(b) At all times herein mentioned, petitioner was and now is the owner and operator of the Steamship "Frej" which was and now is a general ship engaged in the common carriage of merchandise for hire between, amongst others, the Port of San Francisco, California, and the Port of Havana, Cuba.

(c) On or about April 29, 1947, claimant delivered to the said Steamship "Frej" and to petitioner, at the Port of San Francisco, certain shipments of rice in good order and condition, to be carried from said Port of San Francisco to the Port of Havana, Cuba, there to be delivered in like good order and condition as when shipped, to the order of claimant, arrival notice to be addressed to various consignees as hereinafter set forth, and that said shipments were made in consideration of an agreed freight in the total sum of One Hundred One Thousand Nine Hundred Seventy-seven and 03/100 (\$101,977.03) Dollars, as hereinafter set forth, and in accordance with the terms of eighteen (18) bills of lading, as hereinafter set forth, then and there signed and delivered to claimant by the duly authorized agent and/or representative of petitioner and of said Steamship "Frej".

The bills of lading numbers, the notify addressees, the description of each shipment and the freight paid on each shipment, are as follows:

B/L No.	Notify Addressee	Shipment	Freight
1	Hijos De Pio Ferra. S.A.	6,000 cases ) 7,000 sacks )	\$10,219.57
2	Hijos De Pio Ferra. S.A.	8,000 cases	4,151.90

B/L No.	Notify Addressee	Shipment	Freight
3	Hijos De Pio Ferra, S.A.	14,000 sacks	\$14,211.79
4	Messrs. Aguilera, Marganon y Cia	10,000 sacks	10,151.56
5	Messrs. Aguilera, Margannon y Cia	1,000 sacks	1,016.06
6	Messrs. Aguilera, Marganon y Cia	10,000 sacks	10,151.56
7	Messrs. Aguilera, Marganon y Cia	10,000 sacks	10,151.56
8	Pinan, Arxer y Cia, S.enC.	1,000 sacks	1,016.06
9	Pinan, Arxer y Cia, S.enC.	2,000 cases	1,038.73
10	J. Perez, S. A.	3,000 cases	1,557.59
11	J. Perez, S. A.	3,000 sacks	3,046.17
12	F. Bonet-y-Cia, S-enC	1,000 sacks	1,016.06
13	F. Bonet-y-Cia, S-enC	1,000 sacks	1,016.06
14	Carvajal-y-Cia, S-enC	8,000 cases	4,151.90
15	Carvajal-y-Cia, S-enC	7,000 cases ) 5,500 sacks)	9,215.85
16	Carvajal-y-Cia, S-enC	13,500 sacks	13,704.26
17	Pelaez, Pirez, y Cia	6,000 cases	3,114.18
18	Pelaez, Pirez, y Cia	3,000 sacks	3,046.17

Thereafter, said Steamship "Frej" having on board said merchandise, sailed from the Port of San Francisco, en route to the Port of Havana, Cuba.

(d) While still in San Francisco Bay, and on May 6, 1947, a fire started in the boiler-room of said vessel thereafter spreading to the engine-room and the No. 3 compartment. That the rice loaded in the No. 2 and No. 3 compartments was badly damaged and/or destroyed by fire, smoke and water used to extinguish the fire. Thereafter, the entire cargo was discharged at San Francisco. Thereafter the cargo previously loaded in the Nos. 1, 4 and 5 compartments was reloaded in said vessel, having

suffered some handling damage, and said vessel and the rice loaded in Nos. 1, 4 and 5 compartments are now proceeding to Havana, Cuba, to complete the voyage contracted for in said bills of lading. Some of the damaged rice discharged from No. 2 and 3 compartments was reconditioned, as much as reconditioning could be effected, and then sold, and some of said rice was sold in its condition as discharged from said vessel. That reconditioning charges, surveyors' fees, transportation and other expenses were incurred by claimant to minimize and fix the loss and/or damage aforesaid.

(e) A salvage claim of Fifty Thousand (\$50,000) Dollars has been made by the Shipowners and Merchants Tugboat Company, a corporation, and Shipowners & Merchants Towboat Co., Ltd., a corporation, and a libel has been filed in this court pursuant thereto under Proceeding No. 25008-R, in Admiralty, seeking recovery of the sum of Fifty Thousand (\$50,000) Dollars from the Steamship "Frej" and the cargo of rice described in paragraph (c) of this claim.

(f) Said fire was proximately caused by the design or neglect of petitioner in that

(1) The said vessel being unseaworthy at the time of her purchase by petitioner in March-April, 1947, owing to the large amount of free oil on the tank tops immediately below the boilers and a large amount of free oil in the engine-room bilges, and a large amount of oil immediately forward and to the side of the boilers on the forward boiler-room bulkhead and the skin of the



ship, petitioner took no steps at any time to eliminate this fire hazard but petitioner sent said vessel on her said voyage in said condition, and

(2) Knowing the said vessel to be unseaworthy at the time of her purchase by petitioner in March-April, 1947, owing to a large amount of free oil on the tank tops immediately below the boilers, and a large amount of free oil in the engine-room bilges, and a large amount of oil immediately forward and to the side of the boilers on the forward boiler-room bulkhead and the skin of the ship, petitioner took no steps at any time to eliminate this fire hazard but petitioner sent said vessel on her said voyage in said condition, and

(3) Knowing the said vessel to be unseaworthy before and/or at the beginning of the voyage owing to a large amount of free oil on the tank tops immediately below the boilers, and a large amount of free oil in the engine-room bilges, and a large amount of oil immediately forward and to the side of the boilers on the forward boiler-room bulkhead and the skin of the ship, petitioner sent said vessel on her said voyage in said condition, and

(4) The said vessel being unseaworthy at the time of her said purchase due to insufficient fire-fighting equipment, petitioner took no steps at any time to remedy this lack, but petitioner sent said vessel on her said voyage in said condition, and

(5) Knowing the said vessel to be unseaworthy at the time of her said purchase due to insufficient fire-fighting equipment, petitioner took no steps



at any time to remedy this lack but petitioner sent said vessel on her said voyage in said condition, and

(6) Knowing the said vessel to be unseaworthy before and at the beginning of the voyage in that said vessel did not have on board and on duty competent engine-room officers and crew, petitioner sent said vessel on her said voyage in said condition.

By reason of the premises, the fire from the starboard boiler was communicated to the oily fire-room bulkhead and/or the oily skin of the ship and/or to the free oil on the tank tops immediately below the starboard boiler and then to the free oil in the engine-room bilges, or having started, was not promptly extinguished.

(g) Many sacks and cases of rice originally loaded in No. 2 and 3 compartments were damaged and/or destroyed and the damaged rice retained and disposed of in San Francisco and Sacramento, California. The balance of the rice suffered some handling damage, the exact nature and extent of which is unknown to claimant at this time. To the best information and belief of claimant, the loss and/or damage and/or expense as a result of said fire was and is:

Rice damaged and/or destroyed by fire and/or smoke and/or water  
and sold at San Francisco and Sacramento:

B/L No.	Notify Addressee	C.I.F. Value
1, 2, 3	Hijos De Pio Ferra, S. A.....	\$ 81,760.31
4, 5, 6, 7	Aguilera, Marganon y Cia .....	154,249.59
8, 9	Pinan. Arxer & Cia, S. en C.....	438.22
10, 11	J. Perez, S. A. ....	19,333.11
12, 13	F. Bonet y Cia .....	158.34

B/L No.	Notify Addressee	C.I.F. Value
14, 15, 16	Carvajal y Cia, S. en C.....	\$114,429.10
17, 18	Pelaez, Pirez y Cia .....	42.47
		<hr/>
		\$370,411.14
Less salvage proceeds on the sale of said rice.....		129,191.26
		<hr/>
		\$241,219.88

The following expenses were incurred in reconditioning, sale, survey, etc.:

California Dehydrating Co.—reconditioning .....	\$ 19,273.06
River Lines—Transportation to dehydrating plant.....	7,780.12
P. J. Seale & Associates—Commission on sale of damaged rice .....	8,608.73
Genereaux & Hansen—Survey fee .....	100.00
Cost of cartons to repack .....	28.46
Department of Agriculture .....	318.70
Estimated Surveyors' fees .....	25,000.00
	<hr/>
	\$302,328.95
Estimated handling damages which cannot be ascer- tained until the S.S. "Frej" arrives at Havana, Cuba, and the cargo in Nos. 1, 4 and 5 compartments is dis- charged and surveyed .....	50,000.00
	<hr/>
Total.....	\$352,328.95

Claimant reserves the right to amend the claim herein advanced at such time as the actual loss and/or expense and/or damage is ascertained, this not being possible at this time owing to the fact that the S.S. "Frej" and her cargo have not yet arrived at destination.

(h) Prior to the date hereof, and by written assignment, claimant became the owner of the damaged and destroyed cases and sacks of rice hereinabove mentioned with respect to all of the named addressees, except Pinan, Arxer y Cia, S.

en C., and is entitled to maintain the claim herein set forth.

On all shipments mentioned herein and including those in which Pinan Arxer y Cia, S. en C., are the notifying addressees, claimant has been authorized in writing to prosecute these claims.

(i) Claimant and/or the various notify addressees have performed all of the conditions precedent contained in the contract of carriage on their part to be performed.

(j) By reason of the premises, claimant has sustained damage in the sum of Three Hundred Fifty-two Thousand Three Hundred Twenty-eight and 95/100 (\$352,328.95) Dollars, together with interest thereon at the rate of Seven (7%) Percent per annum from May 6, 1947, until paid.

(k) Said S.S. "Frej" and petitioner, and each of them, carelessly and negligently mixed said shipments of rice on loading in San Francisco, California. That said shipments were separately marked and are of different grades and values. That the reasonable cost of re-piling and segregating said shipments according to mark and grade and value as when delivered to said S.S. "Frej" and petitioner, and each of them, would be and is Three Thousand Nine Hundred Thirty-five and 08/100 (\$3,935.08) Dollars. By reason of the premises, claimant has sustained damage in the sum of Three Thousand Nine Hundred Thirty-five and 08/100 (\$3,935.08) Dollars, together with interest thereon at the rate of Seven (7%) Percent per annum from May 6, 1947, until paid.

It is not now possible, and will not be possible

before the legal adjudication thereof to state the amount of salvage and other claims allowed or proved against said cargo; but claimant makes further claim in addition to its damages for the loss of and/or damage to said cargo and makes such claim against Rederiaktiebolaget Frode and said S.S. "Frej" for all such sums as may be allowed or adjudged against said cargo, and hereby give notice of its intention to hold Rederiaktiebolaget Frode and S.S. "Frej" responsible for all salvage and other expenses which said cargo and its owners and claimant may sustain by reason of the said fire or otherwise, and for all moneys which said cargo and its owners and claimant may be called upon to pay other persons, firms and corporations by reason thereof.

/s/ GEORGE H. HAUERKEN,

/s/ HAUERKEN, AMES &

ST. CLAIR,

Proctors for Rice Growers Association of California, a corporation, Claimant.

State of California,

City and County of San Francisco—ss.

George H. Hauerken, being first duly sworn, deposes and says:

That he is one of the proctors for the Rice Growers Association of California, claimant herein; that he had read the foregoing claim and knows the contents thereof. That the same is true of his own knowledge, except as to the matters therein



stated to be alleged upon information and belief and as to those matters he believes it to be true.

The sources of his information and the grounds for his belief as to the matters therein stated to be alleged upon information and belief are statements and records contained in your affiant's office.

The reason this verification is not made by an officer of the claimant corporation is that none of the officers of said corporation are now within the County in which your affiant has his offices.

/s/ GEORGE H. HAUERKEN.

Subscribed and sworn to before me this 8th day of September, 1947.

(Seal)

ALFRED D. MARTIN,

Notary Public in and for the City and County of San Francisco, State of California.

(Affidavit of Service by Mail.)

[Endorsed]: Filed Sept. 8, 1947.

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United States of America,  
Northern District of California—ss.

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing to be full, true and correct copies of the Stipulation Supplementing Stipulation as to Apostles on Appeal and Amending Praecept for Apostles on Appeal, and Claim of Rice Growers Association of California, filed September 8, 1947, in the Matter of the Peti-



tion of Rederiaktiebolaget Frode, a corporation for Exoneration from or Limitation of Liability of the Ownership of the Steamship "Frej", Case No. 25003-G in Admiralty as the same now remains on file and of record in this office.

Attest my hand and the seal of the said United States District Court, Northern District of California, at San Francisco, California, this 23rd day of December, A. D. 1948.

(Seal)

C. W. CALBREATH,  
Clerk.

[Endorsed]: Filed December 23, 1948. Paul P. O'Brien, Clerk.

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United States Court of Appeals  
For the Ninth Circuit

No. 12074

RICE GROWERS ASSOCIATION OF CALI-  
FORNIA, a corporation,

Appellant,

vs.

REDERIAKTIEBOLAGET FRODE,  
a corporation,

Appellee.

APPELLANT'S STATEMENT OF POINTS  
RELIED UPON ON APPEAL

Appellant, Rice Growers Association of California, a corporation, hereby refers to points (1) to (9), inclusive, of its Assignment of Errors heretofore filed with the Clerk of the United States District Court, in and for the Southern Division

of the Northern District of California, and certified to the above entitled Court by said Clerk as part of the record on appeal, and adopts the same as its statement of points relied upon on appeal in accordance with the provisions of Rule 19, subd. 6 of the Rules of the above entitled Court.

/s/ GEORGE H. HAUERKEN,  
/s/ HAUERKEN & ST. CLAIR,  
Proctors for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed October 29, 1948. Paul P. O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

STIPULATION AS TO PARTS OF RECORD  
NECESSARY FOR CONSIDERATION AND  
TO BE PRINTED

It Is Hereby Stipulated by and between Rice Growers Association of California, a corporation, Damage Claimant, and appellant herein, and Rederiaktiebolaget Frode, a corporation, petitioner and appellee herein, through their respective proctors and pursuant to Rule 19(6) and Rule 37(4) of the Rules of the above entitled Court, that the following parts of the record certified to the above-entitled Court by the clerk of the United States District Court for the Northern District of California, Southern Division, are necessary for the consideration of the appeal in the above-entitled Court and are to be printed:

1. Petition for Limitation of Liability. (Record, Vol. 1, pp. 1-10 incl.)
2. Stipulation re Amount of Ad Interim Stipulation of Value Pending Appraisement. (Record, Vol. 1, pp. 11-12 incl.)
3. Ad Interim Stipulation for Value Pending Appraisement. (Record, Vol. 1, pp. 13-15 incl.)
4. Order for Ad Interim Stipulation. (Record, Vol. 1, pp. 16-17 incl.)
5. Order of Reference for Appraisement. (Record, Vol. 1, pp. 18-19 incl.)
6. Amended Order for Monition, Fixing Time and Place for Filing Claims and Restraining Actions. (Record, Vol. 1, pp. 20-23 incl.)
7. Answer of Rice Growers Association of California to Petition for Limitation of Liability. (Record, Vol. 1, pp. 24-35 incl.)
8. Order Noting Defaults. (Record, Vol. 1, pp. 36-39 incl.)
9. Stipulation re Value, including Exhibits "B" and "C" thereto. (Record, Vol. 1, pp. 40-44 incl.)
10. Order Fixing Amount of Liability Fund. (Record, Vol. 1, pp. 45-46 incl.)
11. Petition for Appeal. (Record, Vol. 1, p. 67.)
12. Notice of General Appeal. (Record, Vol. 1, pp. 68-69 incl.)
13. Order Allowing Appeal. (Record, Vol. 1, p. 70.)
14. Assignment of Errors. (Record, Vol. 1, pp. 71-73 incl.)
15. Stipulation as to Service of Papers on Appeal. (Record, Vol. 1, pp. 77-78 incl.)

16. Stipulation as to Apostles on Appeal. (Record, Vol. 1, pp. 79-81 incl.)

17. Praeceptum for Apostles on Appeal. (Record, Vol. 1, pp. 82-83 incl.)

18. Order Extending Time to Docket. (Record, Vol. 1, p. 84.)

19. Certificate of Clerk of District Court of the United States, Northern Division of California, to Transcript of Record on Appeal. (Record, Vol. 1, p. 91.)

20. Citation on Appeal. (Record, Vol. pp. 92-93 incl.)

21. The following part of the Reporter's Transcript of the proceedings at the hearing had before the Honorable Louis E. Goodman on the 16th day of August, 1948:

Beginning at page 2, line three thereof to and including page 8, line 20 thereof. (Record, Vol. 2.)

22. Certificate of Reporter to Reporter's Transcript. (Record, Vol. 2.)

23. Claim of Rice Growers Association of California. (Supplement to Record on Appeal.)

24. Stipulation Supplementing Stipulation as to Apostles on Appeal and Amending Praeceptum for Apostles on Appeal. (Supplement to Record on Appeal.)

25. Appellant's Statement of Points Relied  
Upon on Appeal filed in the above-entitled Court.  
26. This Stipulation.

Dated this 23rd day of December, 1948.

/s/ GEORGE H. HAUERKEN,

/s/ HAUERKEN & ST. CLAIR,

Proctors for Damage Claimant and Appellant, Rice  
Growers Association of California.

/s/ CLARENCE G. MORSE,

/s/ GRAHAM & MORSE,

Proctors for Petitioner and Appellee, Rederiaktie-  
bolaget Frode.

[Endorsed]: Filed December 23, 1948. Paul P.  
O'Brien, Clerk.



